



CONTRACT# EPS080079-2

ENERGY PERFORMANCE CONTRACTING

IN ACCORDANCE WITH A.R.S. 41-2501, ET SEQ, AND UNDER THE AUTHORITY OF THE STATE OF ARIZONA, DEPARTMENT OF ADMINISTRATION, STATE PROCUREMENT OFFICE DIVISION, HEREBY ESTABLISHES THE FOLLOWING ARIZONA STATE CONTRACT.



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Energy Performance Contracting

State of Arizona
State Procurement Office
100 N 15th Ave., Suite 104
Phoenix, AZ 85007

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Contract Information

Contract No.: EPS080079-2
Energy Performance Contracting

State of Arizona
State Procurement Office
100 N 15th Ave., Suite 104
Phoenix, AZ 85007

Requisition Number: ADSM-7BE4G4

Solicitation Number: EPS070079-A3

Solicitation Title: Energy Performance Contracting

Vendor Name: Johnson Controls Inc.

Vendor Contact Info: Michael Trovato
State Government Solutions - Arizona
2032 West 4th Street
Tempe, AZ 85281-7293
916-996-9920 (o),
916-996-9920 (c),
480-967-5213 (f)
Email: Michael.Trovato@jci.com

Richard Slack
Systems Branch Manager
2032 West 4th Street
Tempe, AZ 85281-7293
480-446-2635 (o),
480-229-0871 (c),
480-967-5213 (f)
Email: Richard.C.Slack@jci.com

Proposal Number: ADSM-7DYMFMZ-1

Contract Number: EPS080079-2

Type: Statewide

Status: Complete

Contract Start Date: 6/26/08

Contract End Date: 6/25/09

Max Extensions: 4 Years

Procurement Officer: Elizabeth Casteel
(602) 542-9141
Elizabeth.Casteel@azdoa.gov

Procurement Manager: Doug Milford

Procurement Administrator: Jean Clark



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1. Applicable State Policy

Contractor shall agree to any contractual modifications required as a result of revised or newly enacted legislation regarding energy conservation procurement or policy following contract awards. Examples of such modification requirements may include but are not limited to: Applicable legislation contained in HB2766. If passed, Contractor shall be held to these additional requirements. HB2766 is not currently law and may be viewed at www.azleg.gov. Current provisions of A.R.S. § 34-455 regarding financing of energy conservation measures.

2. Background, Training and Certification

Offerors shall maintain as valid all required certifications and licenses required to operate a business in their field throughout the life of the contract.

3. Certifications

All key personnel when required shall provide evidence of their certification(s) relevant to the services provided under the contract.

4. Contraband

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

4.1. Definition – A.R.S. § 13-2501

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

4.2. Promoting Prison Contraband – A.R.S. § 13-2505

4.2.1. A person, not otherwise authorized by law, commits promoting prison contraband:

4.2.1.1. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or

4.2.1.2. By knowingly conveying contraband to any person confined in a correctional facility; or

4.2.1.3. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.

4.2.2. 2. Promoting prison contraband is a Class 5 felony.

5. Contract Assignment

Contractor may not assign, transfer or convey any of its rights or obligations under this Contract without the written permission of the State Procurement Office.



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6. Contract Renewal

The contract shall not bind nor purport to bind, the State for any contractual commitment in excess of the original contract period. The State shall have the right, at its sole option, to renew the contract for four (4) one-year periods or a portion thereof. If the State exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period.

7. Contract Restructure After Award

The State may clarify any Contract following award. This clarification shall not substantially alter the contents of the Contract, but shall only edit and reformat the Contract in a manner that will facilitate ease of use, contract administration, and concurrence of the Parties.

8. Contract Term

The term of any resultant contract will commence on the date of award and will continue for one year unless canceled, terminated or extended as otherwise provided herein.

9. Contract Type (Term)

This shall be a term contract, indefinite quantity. Pricing agreed upon between Customers and the Energy Services Companies (ESCOs) shall be fixed price.

10. Eligible Agencies (Statewide)

This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes 41-2632.

11. Federal Immigration and Nationality Act

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

12. Indemnity

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents,



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employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

13. Insurance – Standard Service Contract

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

13.1. Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

13.1.1. Commercial General Liability - Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate \$2,000,000

Products - Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Blanket Contractual Liability - Written and Oral \$1,000,000

Fire Legal Liability \$ 50,000

Each Occurrence \$1,000,000

13.1.1.1. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".

13.1.1.2. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.



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13.1.2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

13.1.2.1. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

13.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory Employers' Liability

Each Accident \$ 500,000

Disease - Each Employee \$ 500,000

Disease - Policy Limit \$1,000,000

13.1.3.1. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

13.1.3.2. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

13.2. Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

13.2.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

13.2.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

13.2.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

13.3. Notice of Cancellation

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to (Arizona State Procurement Office, Attn: Procurement Officer, 100 N. 15th Avenue, Suite 104, Phoenix, AZ 85007) and shall be sent by certified mail, return receipt requested.



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13.4. Acceptability of Insurers

Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above – required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

13.5. Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to (Arizona State Procurement Office, Attn: Procurement Officer, 100 N. 15th Avenue, Suite 104, Phoenix, AZ 85007). The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.

13.6. Subcontractors

Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

13.7. Approval

Any modification or variation from the insurance requirements in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

13.8. Exceptions

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

14. Invoicing

14.1. Contractor shall invoice annually, in 12 month increments starting from the date project completion is accepted by the Customer and the Performance period begins.

14.2. All invoices shall contain the contract number, contract name, Customer and Contractor project contacts, purchase order number, Contractor's name and address. Invoices shall be accompanied by the Annual Reconciliation (see Scope of Work).

14.3. Excess savings shall not be carried over and applied to future periods.



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14.4. Contractor may submit progress reports as frequently as monthly to the State for the State's review and approval. Each progress report shall indicate the percentage of project completion to date and the amount owing by the State to the Contractor for such completion.

15. IT 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. 41-2531 and 2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

16. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

17. Price Adjustment (Annual)

17.1. The State Procurement Office may review a fully documented request for a price increase only after the contract has been in effect for one (1) year. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. The State Procurement Office shall determine whether the requested price increase or an alternate option is in the best interest of the State.

17.2. The price increase adjustment, if approved, will be effective upon the effective date of the contract extension or the first day of the month following approval, whichever is later.

18. Pricing

18.1. The Customer (State of Arizona departments, agencies, commissions and boards and eligible universities, political subdivisions and nonprofit educational or public health institutions) shall not be charged for the Investment Grade Audit or the Technical Energy Audit unless and until the audits are accepted by the Customer.

18.2. A fixed cost made up of the all project costs plus profit, in accordance with this contract, shall be agreed upon prior to the commencement of the project. Additional costs shall not be eligible unless accompanied by a significant change to the Scope of the project. Agreement to classify a change as a significant change shall be mutually agreeable to the Customer and Contractor and shall be commemorated in writing prior to the execution of the change. Should such agreement not be reached, the change shall not occur.

18.3. Contractor agrees that the proposed maximum fees shall incorporate its responsibility to adhere to and complete the full scope of work as presented in the Investment Grade Audit, Technical Energy Audit and Energy Performance Contract.



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19. Usage Report

The contractor shall furnish the state a usage report delineating the acquisition activity governed by the contract. The format of the report shall be approved by the state and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit. The usage report shall be due at the end of each three month period of the contract term.

20. Business Operations in Iran

In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Iran.

21. Business Operations in Sudan

In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan.



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1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. **Arizona Law.** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



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2.2. Implied Contract Terms.

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence.

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1. Special Terms and Conditions;
- 2.3.2. Uniform Terms and Conditions;
- 2.3.3. Statement or Scope of Work;
- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties.

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability.

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence.

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver.

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records.

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other 'records' relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination.

The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.



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3.3. Audit.

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing.

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices.

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract.

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State.

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property.

Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ('Intellectual Property'), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.



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4. Costs and Payments

4.1. Payments.

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery.

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form

In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State Fiscal Year.

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the Current State Fiscal Year.

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract, provided that any such cancellation shall not relieve the State from its obligations to pay for any work performed by Contractor prior to the effective date of such cancellation.



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4.5.3. Cancel the contract and re-solicit the requirements, provided that any such cancellation shall not relieve the State from its obligations to pay for any work performed by Contractor prior to the effective date of such cancellation.

5. Contract Changes

5.1. Amendments.

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts.

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation.

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss.

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification.

6.2.1. Contractor/Vendor Indemnification (Not Public Agency). The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers.'



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6.3. Indemnification – Patent and Copyright.

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term 'force majeure' means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations.

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



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7. Warranties

7.1. Liens.

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality.

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness.

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing.

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Year 2000.

7.5.1. Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of force majeure shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2. Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information



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technology products delivered under this Contract. In addition, the defense of force majeure shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

7.6. Compliance With Applicable Laws.

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.7. Survival of Rights and Obligations after Contract Expiration or Termination.

7.7.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance.

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies.

The rights and the remedies of the State under this Contract are not exclusive.



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8.4. Nonconforming Tender.

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset.

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities.

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment.

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience.

The State reserves the right to terminate the Contract, in whole or in part, without penalty or recourse when in the best interests of the State and with the provision of thirty (30) days written notice to the vendor. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in



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progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.1. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.2. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination.

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



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1. Background:

To prepare a State Term Contract on Energy Services Performance Contracts, the State of Arizona (State) is seeking proposals on qualifications from interested and qualified Energy Services Companies (ESCOs) that are capable of providing energy performance contracting services for selected facilities owned by the State's twenty (20) Agencies as well as various political subdivisions (Customers) in accordance with the requirements below. Additional opportunities for comprehensive energy savings as well as related capital improvement services may present themselves. Financing may be requested of ESCOs by Customers and is allowable; however, the provision of financing is not a requirement. ESCOs shall work directly with the Customers when requested.

The State of Arizona owns and operates a variety of facilities across the State, including administrative buildings, health care units and correctional facilities. Additionally, eligible State universities, community colleges, cities and counties may choose to use this contract.

2. Objectives:

2.1. The State seeks a broad range of services and capital improvements in order to reduce the consumption and related costs of energy use at Arizona's government buildings. Should the Customer wish the services and capital improvements be implemented by the ESCO, they will be financed through an energy savings performance based contract under which the State:

2.1.1. Incurs no initial capital costs;

2.1.2. Achieves significant long term savings;

2.1.3. Achieves a guarantee of energy savings and operation and maintenance savings exceeding the cost of implementation;

2.1.4. Obtains consistent levels of occupant comfort and building functionality;

2.1.5. Captures ancillary benefits that may accrue as a direct result of such energy related services and capital improvement, such as environmental protection and hazardous material disposal.

2.2. Offerors are encouraged to advocate installation and implementation of improvements which will provide the greatest possible energy and operation and maintenance savings. Essential services and improvements are those that will reduce energy consumption in State facilities, upgrade capital energy related equipment, improve building operation and maintenance, save costs through fuel switching or improved demand management, electric rate negotiations, and aid in meeting environmental management responsibilities.

3. Energy Performance Project Phases:

3.1. Phase One: Identification of need.

Upon identification of a need or feasible improvement, the Customer will develop a short analysis of the project that they intend. This should include but not be limited to the scope of the project; address, age, use, and occupancy of the buildings; minimum levels of occupant comfort to be maintained and current building equipment.



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The Customer will provide notice to all contracted ESCOs of the project analysis indicated above as well as initial walk-throughs.

3.2. Phase Two: Preliminary Energy Audit

Interested ESCOs shall submit a detailed Preliminary Energy Audit of acceptable quality to the Customer, verifying the savings projection of the recommended improvements.

In accordance with Uniform Terms and Conditions, Section 3.7, Property of the State and Section 3.8, Ownership of Intellectual Property, all documents created in association with the Preliminary Energy Audit created under this contract shall be the sole property of the State.

3.3. Phase Three: Investment Grade Audit.

Based on the preliminary audits, the Customer shall decide whether there is enough savings to warrant an Investment Grade Audit and, if the decision is to proceed, which ESCO to engage for the Investment Grade Audit.

In accordance with Uniform Terms and Conditions, Section 3.7, Property of the State and Section 3.8, Ownership of Intellectual Property, all documents created in association with the Investment Grade Audit created under this contract shall be the sole property of the State.

In accordance with Section 5 below, the Investment Grade Audit shall be signed and sealed by a professional technical engineer registered in the State of Arizona, specializing in Energy Management. Energy management experience without specialization may be acceptable and shall be at the sole discretion of the State. The State reserves the right to select a third-party engineer or have these functions accomplished within the State.

The Investment Grade Audit shall include, at a minimum:

- 3.3.1. Assumptions, baselines, and baseline adjustment criteria;
- 3.3.2. Building description;
- 3.3.3. Indication of current and future energy consumption for the subject building(s);
- 3.3.4. Analysis methods and calculations;
- 3.3.5. Proposed scope and cost, as well as cost-saving measures to be applied;
- 3.3.6. Projected savings for each measure (See Section 4);
- 3.3.7. A net cash flow showing replacement of items with service lives less than the term of the contract replaced by using energy cost savings;
- 3.3.8. Costs that shall be shown as open-book pricing and shall include a minimum of the following:
 - 3.3.8.1. Operational maintenance costs,
 - 3.3.8.2. Simple payback,



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3.3.8.3. Life cycle costs,

3.3.8.4. Cost estimate for each measure, including design, engineering, installation, maintenance, repairs and debt services.

3.4. Phase Four: Implementation of Energy Performance Contract.

Upon acceptance by the Customer of the completed Audit, the Customer will have the option to pursue an Energy Performance Contract for implementation of the recommended project. The Customer shall not be bound to use the Audit ESCO for the implementation of the project.

All construction shall comply with the applicable codes, standards, Arizona Revised Statutes, Governor's Executive Orders, etc. as described in Appendix A.

Should the Customer wish to enter into an Energy Performance Contract with the Audit ESCO, the Contract shall be written in accordance with A.R.S. § 34-451 et al, A.R.S. § 34-455 and A.R.S. § 34-456. The Energy Performance Contract will address two (2) sub-phases both in scope and pricing: construction and subsequent measurement of performance.

3.4.1. At a minimum, the construction component will consist of the following:

3.4.1.1. Incorporation of this contract's terms and conditions;

3.4.1.2. The Investment Grade Audit, either in whole or in part;

3.4.1.3. Details and timelines regarding the exact improvements;

3.4.1.4. Equipment to be installed by ESCO;

3.4.1.5. All labor and equipment costs using open-book pricing;

3.4.1.6. All guaranteed energy and maintenance cost savings;

3.4.1.7. Method of measurement and verification; and

3.4.1.8. Financing agreed upon, if applicable. All financing shall provide for early pay-off with no penalty.

3.4.2. The Performance Period shall commence upon final completion of all construction, installations and related requirements. Services to be provided by the ESCO during the Performance Period, including, but not limited to:

3.4.2.1.1. Frequency of measurement and verification;

3.4.2.1.2. Savings guarantee;

3.4.2.1.3. Applicable staff training; and

3.4.2.1.4. Contract maintenance services, if applicable. (See Section 12)



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4. Allowable savings:

4.1. Allowable savings include:

- 4.1.1. Energy and water savings;
- 4.1.2. Material/commodity savings, including scheduled replacement of parts;
- 4.1.3. Outside labor cost savings, including maintenance contracts;
- 4.1.4. In-house labor costs;
- 4.1.5. Deferred maintenance costs;
- 4.1.6. Offset of future customer capital cost; and
- 4.1.7. Operating and Hardware Maintenance Savings (See Section 10).

4.2. The following items may be negotiated:

- 4.2.1. Escalation rates;
- 4.2.2. Interest rates, as applicable; and
- 4.2.3. Customer equity cash outlay (Customer's option).

4.3. Disallowed savings include:

- 4.3.1. Maintenance related to labor and personnel.

5. Engineer Required:

The Investment Grade Audit report shall be signed and sealed by a professional technical engineer registered in the State of Arizona, specializing in Energy Management. Energy management experience without specialization may be acceptable and shall be at the sole discretion of the State. The Audit shall include estimates of savings for each measure: the cost estimate for each measure must be comprehensive of all associated costs including design, engineering, construction documents, project management, installation, maintenance, repairs and debt service (if applicable).

6. Meeting Project Schedule:

Prior to the commencement of each phase, the ESCO must provide a final schedule of project milestones including equipment-servicing and preventive maintenance provisions that will become part of any final contract. The ESCO is responsible for meeting scheduled deadlines or notifying the state of any schedule changes. In the event any milestone or service provision is not met as scheduled without prior approval from the Customer, the Customer may consider the ESCO in a default and withdraw from all contractual obligations without penalty.

7. Handling of Hazardous Materials:

All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials



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that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable State rules relative to the premises. In the event the ESCO encounters any such materials, the ESCO shall immediately notify the project manager and stop work pending further direction from the project manager. The State may, in its sole discretion, suspend work on the project pending removal of such materials or terminate the contract.

8. Use of Stated Cost Markups:

The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied in costs presented in any subsequent technical audit or performance contract, providing the scope and size of the project remain the same as assumed when markups were disclosed.

9. Payment:

9.1. Audit.

The following is the basis upon which the Report fee agreed upon by the Customer and the ESCO in Section 3.2.9 shall be due to the ESCO from Agency.

- 9.1.1. If the Customer accepts the Audit and enters into an Energy Performance Contract with the ESCO to implement the cost saving measures, the Customer shall have no up-front payment obligations, but acknowledges that the Audit fee shall be incorporated into the ESCO's project costs.
- 9.1.2. If the Customer accepts the Audit but fails to enter into an Energy Performance Contract with the Contractor to implement the cost saving measures within ninety (90) business days, Customer shall pay the ESCO the Audit Fee without any further liability to either party. The ESCO shall provide the Customer with all documents created under this contract within ninety (90) days of Audit acceptance.
- 9.1.3. Should the Customer terminate the Audit by written notice prior to completion and acceptance, the Customer shall pay the ESCO all proportional contractual payments earned up to the date of termination without any further liability to either party.
- 9.1.4. Should the ESCO determine any time during the Audit that sufficient savings cannot be attained to meet the Customer's terms as set forth in the contract and Plan, the Audit will be terminated by written notice from the ESCO to the Customer. In this event, the Customer shall have no obligation to pay the Audit Fee, in whole or in part.

9.2. Construction and Performance.

- 9.2.1. ESCO shall prepare a measurement and verification report on an annual basis in addition to an annual reconciliation of savings. The report shall be signed and sealed by an engineer registered in Arizona. The state reserves the right to hire a third party engineer to review the report or have these functions accomplished within the State.
- 9.2.2. Payments to ESCOs will be made in compliance with the Arizona Revised Statute 34-456. Payments will be made from the actual savings (Customer's Budgeted Energy Costs less Actual Energy Cost of the facility following implementation) realized by the Customer.



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9.2.3. Annual Reconciliation - shortfall.

If the Annual Reconciliation reveals a shortfall in annual Energy Cost Savings, the ESCO is liable for such shortfall, and shall pay to the Customer the amount by which the Customer's actual energy costs exceeded guaranteed savings set forth in the Energy Savings Guarantee.

The ESCO shall remit such payments to the Customer within sixty (60) days of written notice by the Customer of such monies due. If the ESCO fails to make such payment to the Customer within ten (10) days after demand therefore, the Customer may offset payments in the event of ESCO-financing, or in the event of third-party financing, demand payment pursuant to the instrument identified in the Energy savings Guarantee as security for the ESCO's Guarantee.

9.2.4. Annual Reconciliation – Excess Savings.

If the Annual Reconciliation reveals Annual Excess Savings, 100% of such Excess Savings shall be retained by the State.

10. Operating and Hardware Maintenance Savings:

Any Operations and Maintenance cost savings related to maintenance and operation subject facilities will be limited to those that can be thoroughly documented and approved by the Customer.

11. Professional Architect/Engineer Involvement:

A professional engineer registered in the State of Arizona and of an energy related discipline shall be engaged by the ESCO. Such engineer shall be tasked with ensuring the completeness of the Energy Conservation Measures (ECM), verifying the accuracy of all calculations and estimated savings, deciding what safety factors and assumptions are appropriate, and approving the monitoring and verification process. Documents prepared for construction shall be sealed and signed by an Arizona registrant.

12. Maintenance:

At least three (3) sets of operation and maintenance manuals for each site shall be provided for all equipment replacements and/or upgrades at each location.

12.1. Preventive Maintenance Schedule.

Upon completion of the contract, the ESCO shall provide to the Customer a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following contract expiration or termination.

12.2. Follow-up Monitoring and Maintenance Services.

If the ESCO was engaged to implement the project, following the installation and implementation of improvements, the ESCO may be required to be responsible for maintaining and monitoring the measures to ensure optimal performance. Should the Customer decide to utilize the ESCO for maintenance, all maintenance and monitoring fees may be paid through guaranteed savings. However, the Customer has the option to decline these services and competitively seek them or perform them in-house.



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13. Training:

The ESCO shall provide training for Customer personnel on all equipment and software provided by ESCO and necessary books, manuals and related educational and technical information.

14. Guaranteed Savings:

The Customer requires a minimum annual guaranteed cost savings. The cost of replacing equipment and its components installed under the Energy Performance Contract, with life expectancies less than the Performance Period, shall be included in the ESCO's savings guarantee. If the project does not generate the guaranteed cost savings in any given year, the ESCO shall be responsible for reimbursing the Customer the amount of the shortfall.

15. As Built Drawings:

Where applicable, ESCO must provide to the Customer one set of Mylar, reproducible "as built" and one set of record drawings in electronic Auto Cad (version to be determined later) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These shall include architectural, mechanical, electrical, structural, and control drawings and operating manuals within thirty (30) days of completion of installation.

16. State Resources to be Provided:

Public Facilities using the ESCO services defined under this RFP will provide the following:

- A. Guidance to ESCO regarding future anticipated needs or changes to facilities or agency mission which may impact ESCO contract or anticipated results;
- B. Access to key facility staff in management and engineering;
- C. Reasonable access to facilities relevant to stage of work in progress;
- D. Access to relevant utility records;
- E. Access to relevant facility plans and blueprints;
- F. Access to maintenance records; and
- G. Access to staff for training.

17. Reports:

At a minimum, following reports shall be provided on an annual basis:

17.1. By ESCO.

- 17.1.1. A schedule of quarterly savings expected from the implementation for Customer's review and approval.
- 17.1.2. The Annual Reconciliation to include Energy Cost Savings calculated in accordance with the Agency's Energy Performance Contract.



Scope of Work

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State Procurement Office
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Phoenix, AZ 85007

Within sixty (60) days after the end of each calendar year, the ESCO shall provide to the Customer an Annual Reconciliation of the guaranteed energy cost savings and the actual verified metered cost savings for said calendar year. The Annual Reconciliation shall reflect the amount guaranteed, the amount of actual Energy Cost Savings achieved and the total amount of payments already paid to the ESCO. The Customer will have thirty (30) days to accept or reject the reconciliation. The Customer will provide written notice of such rejection, within the stated acceptance period, specifying the basis of the deficiency. Annual reconciliation will be based on actual verifiable cost savings and not on any adjusted savings.

17.2. By Customer.

Copies of all energy bills showing Agency energy usage.

18. Customer Activities:

The Customer reserves the right to make energy and water improvements to the work sites and to monitor the performance of the installations independently of the ESCO. Additionally, the Customer may wish to integrate other identified capital needs with Contractor projects, which may or may not contain energy and water saving opportunities.



Price Sheet

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1. Mark-up.

Offerors shall indicate the maximum percentage markup they will charge for any given project. Individual projects may be quoted at rates below or up to the markup rate indicated below.

NOTE: A fixed price made up of all project costs and total markup shall be agreed upon in writing prior to the commencement of any project. Additional costs shall not be eligible unless accompanied by a significant change to the project scope. Agreement to classify a change as a significant change shall be mutually agreeable to the Customer and Contractor and shall be commemorated in writing prior to the execution of the change. Should such agreement not be reached, the change shall not occur.

35% mark up on total project costs

The maximum 35% markup Contractor has offered is inclusive of all costs and that no other markups will be charged or displayed in pricing or on invoices including, but not limited to, profit and overhead.

2. Fees.

The proposed maximum fee for Investment Grade Audit and Project Development shall be provided on a cost per square foot basis.

Investment Grade Audit and Project Development **\$0.12** per Square Foot

NOTE: Contractor recognizes and is providing the maximum fee amount requested by the state. However, please understand that Contractor has done thousands of Investment Grade Audits and energy project developments ranging from very simple to extremely complex. These differing conditions can have a major impact on such a fee. Additionally this fee is further impacted given the amount and quality of customer data furnished.



Attachment I – State Performance Contract Code Compliance

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Energy Conservation Measures in State buildings must be designed and built in compliance with the applicable articles of the Arizona Revised Statutes, Governor's Executive Orders, codes adopted by authorities having jurisdiction (AHJ), industry accepted standards and miscellaneous design and construction requirements as described below.

Arizona Revised Statutes

All applicable Articles of the Arizona Revised Statutes (A.R.S.) updated with the 48th Legislature, 1st Regular Session information, containing the version of statutes effective January 1, 2008, shall apply. Following is a list of ARS will apply, as a minimum, for the energy conservation aspects of the building:

A.R.S. 34 §451 Energy conservation standards for public buildings
A.R.S. 34 §452 Solar design standards for state buildings; energy life cycle costing
A.R.S. 34 §453 Energy performance goals for state buildings
A.R.S. 34 §454 Establishment and use of life cycle cost methods and procedures; definition
A.R.S. 34 §455 Performance contracting; definition
A.R.S. 34 §456 Use of energy savings; definition

Governor's Executive Orders

Ex. Order 2004 – 28 Implementation of Statewide 5% Water Use Reduction Plan

Codes Adopted By Authorities Having Jurisdiction

State buildings must comply with codes , with local Amendments, adopted by the authorities having jurisdiction where the building is located. Following is a list of codes adopted by most of the major cities in Arizona:

International Building Code and local Amendments
International Existing Building Code
International Energy Conservation Code and local Amendments
International Fuel Gas Code
National Electrical Code and local Amendments
Uniform Plumbing Code and local Amendments
International Plumbing Code and local Amendments
International Mechanical Code and local Amendments
Neighborhood Preservation Ordinance
City's Sign Code
City's Lighting Code
Arizona State Fire Marshal's adopted International Fire Code
ICC/ANSI A117.1 Americans with Disabilities Act

Industry Accepted Standards

ASHRAE Standard 90.1 – 2004 "Energy Standard for Buildings Except Low-Rise Residential Buildings"
ASHRAE Standard 62 – 2001 "Ventilation for Acceptable Indoor Air Quality"
ASHRAE Standard 55 – 1992 "Thermal Environmental Conditions for Human Occupancy"
Illuminating Engineering Society of North America Lighting Standard



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Miscellaneous Requirements

- 1) All materials specified by A/Es and installed by contractors and their sub-contractors must not contain any laboratory detectable amounts of Asbestos Containing Material (ACM) using the method specified in Appendix A, Subpart F of 40 CFR Part 763 Section 1, Polarized Light Microscopy. For new materials installed by the contractors / sub-contractors, Material Safety Data Sheet (MSD) for each new material has to be provided to ensure that materials used do not contain asbestos per the regulatory standard.
- 2) Water Free Urinals in State Buildings: ADOA Position on Water Free Urinals in State Buildings dated_____ shall apply
- 3) Requirements described in AIA Document A201, General Conditions of the Contract for Construction – 1997 with 2001 Arizona Modifications shall apply.

Rev. 2/21/2008



Exhibit I –Proposal Information Submitted

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For further information the Contractor submitted as part of its Proposal, including but not limited to areas of expertise, Energy Conservation Measures it has experience with, innovations, and the processes it will go through to meet the requirements of the Contract, go to their Contract page on the SPIRIT website, locate the "Document Information" Section at the top of the page and click on the hyperlink next to Proposal #.